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CITY CLERK'S OFFICE

2008 OCT -3 PM 4: 14

Exhibit No. 119
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

(301) 230-5206
dfreishtat@srgpe.com

October 3, 2008

The Honorable Susan Hoffmann, Mayor
and Members of the Rockville City Council
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

Re: Additional Comments on the Final Draft (September 2, 2008) of Zoning Ordinance
Revision; Seven Locks Minimall Property
Our File No. 102287.00004

Dear Mayor Hoffman and Members of the City Council:

This Firm represents David Fink and Marc Solomon, the owners of the "Minimall" at Seven Locks Road and Fortune Terrace. On September 11, 2008, I sent to you a letter requesting a change in the recommended zoning for the subject property. The purpose of this letter is to further expand on my comments.

As I had stated in my prior letter, the staff draft zoning ordinance had recommend the zoning for the Minimall and the property on the north side of Fortune Terrace be zoned MXCD. This was in response to presentations by the ownership to the staff of the proposed redevelopment of the entire site in a mixed use development, extending the mixed use in Parc Potomac and the uses across I-270. It appears that the Planning Commission made all of the C-1 zoned neighborhood centers MXNC, including the Minimall, even though it is the largest neighborhood center by far, and proposed for a mixed use, compatible with its surrounding uses.

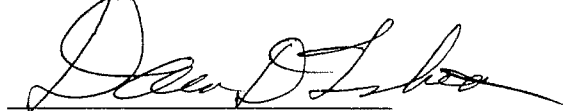
The Minimall is over 50,000 square feet, leasable area, and functions as something more. It is not a neighborhood center and its ownership proposes that it could and should function differently, as part of a larger mixed use community. It functions now as an interim use.

The ownership has committed that all of the tenants would be relocated within the community when that happens, something that is not likely occur for the next decade. It is important that the zoning reflect the future land use, but all parties recognize that development will have to go through the normal review process, including a full site plan review and Use Permit. Compatibility with surrounding uses will be assured.

The Honorable Susan Hoffmann, Mayor
October 3, 2008
Page 2

In the latest draft of the zoning map, MXCD is recommended for the property north of Fortune Terrace. It is requested that the MXCD zone be extended to include the retail center now proposed as MXNC.

Sincerely,

A handwritten signature in black ink, appearing to read "David D. Freishtat", written over a horizontal line.

David D. Freishtat

DDF:grs

Cc: Mr. Scott Ullery
MS. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander
Sondra H. Block, Esquire
Mr. David Fink
Mr. Marc Solomon

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Exhibit No. 120
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

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Karl L. Ecker

Maryland and D.C. except as noted:
* Virginia also ° D.C. only
+ Maryland only ■ VA only
† D.C. and VA only
‡ MD and VA only

Writer's Direct Dial Number:

October 9, 2008

The Honorable Susan Hoffmann
Council of Rockville
111 Maryland Avenue
Rockville, Maryland 20852

Re: Off Premises Sale of Alcohol in Neighborhood Centers
Burgundy Park Shopping Center Tia Ochi Restaurant

Dear Mayor and Members of the Council:

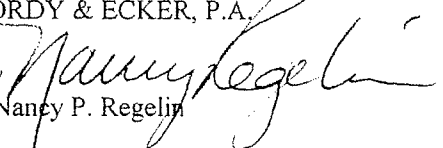
This is a follow-up to our August 25, 2008 letter regarding preserving the zoning or the allowable use that would permit an existing family owned restaurant in the Burgundy Park Shopping Center to continue off premises sale of alcohol as a permitted use. This Firm represents the owner of the Burgundy Park Shopping Center whose concern is the small businesses in the neighborhood center.

We respectfully request that off premises sale of alcohol be a permitted use in conjunction with a restaurant and exempt them from the conditional use provision in the proposed draft that prohibits off premises sales if the neighborhood center is next to single family homes (See MXC Footnote 1, Section 25.13.h, pages 6 and 7 of the 9-2-08 draft). Where else are the neighborhood centers with these small restaurants located but in the middle of the single family home neighborhoods?

The focus of the Council's discussions on the proposed prohibition of off-premises sale of alcohol appears to be centered solely on the Stonestreet Market and the type of alcohol sales use there. Let's differentiate under allowable uses the small restaurants found in the neighborhood centers whose small business' livelihood depends on both on-premises and carry-out food and beverage sales. **Tia Ochi**, a small independent family owned restaurant in Burgundy Park Shopping Center, holds a Class D Beer & Light Wine license which by state law authorizes its holder to sell beer and light wines at retail for consumption on the premises or elsewhere (off-premises). At Tia Ochi a customer can purchase beer or wine to accompany their dinner or to take out with their carryout pizza order.

Adding another category or modifying the next category in 25.13.03.h to permit off premises sale of alcohol in conjunction with a restaurant use will protect these neighborhood restaurants that have provided local, ethnic, and convenient food service to their neighborhoods for many, many years. Thank you in advance for your consideration and adoption of this request.

Very truly yours,
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By 
Nancy P. Regelin



"Talisman Associates"
<talism@verizon.net>

10/10/2008 03:43 PM

To <mayorcouncil@rockvillemda.gov>,
<shoffmann@rockvillemd.gov>,
<jbritton@rockvillemd.gov>,
cc "Naomi Belkin" <naomi_talisman@verizon.net>,
"Mahyar" <mahyar@att.net>

bcc

Subject Zoning heights

October 10, 2008

Dear Mayor and council:

As we come to discuss zoning heights again, I would like to reiterate my objections. Anything below our current height of 75 feet greatly reduces the shopping center's potential for development. Our shopping center is very small and a greater height would be much more attractive to developers as they would have the opportunity go up to seventy percent more space. Many of the owners of the shopping center, myself included, have been invested in our property for over 20 years and it would be extremely unfair of the city to devalue the property through zoning and putting strict limits on any future redevelopment.

The shopping center is on a major highway and we pay substantial taxes because of our location. If the city should move to restrict our zoning height it would mean that the city is not interested in using our tax dollars to improve our area. The owners plan to stay for a long time to come and so, we have the best interests of our community in mind. We believe that a redevelopment can be attractive and of high quality, no matter what the height. We plan to guard our interests and want to maintain the ability to plan a shopping center that would add value to the community.

These are extremely trying financial times. We are doing our best to provide for our community. It is of concern that after the hours of meetings and recommendations by professionals, we still cannot be assured that a positive decision about our investment and our future will be respected. The zoning height is the one thing that could dramatically devalue our investment. We are not interested in redevelopment now or even in the near future. We do insist that the zoning height gives us leverage strength over future development. Unlike most shopping centers we are a condominium of small business owners and this property is our major asset.

Sincerely,
Naomi Belkin
President, Twinbrook Mart Condo Association
naomi_talisman@verizon.net

Holland+Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center, Suite 800
Bethesda, MD 20814-6337
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Routed To:

☒ Council

☐ City Clerk

☒ City Manager

☐ City Attorney

☐ Council Support Specialist

☐ Other _____

Exhibit No. 122
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

October 13, 2008

William Kominers
301 215 6610
William.kominers@hklaw.com

VIA ELECTRONIC AND OVERNIGHT MAIL

The Honorable Susan R. Hoffmann, Mayor,
and Members of the Rockville City Council
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

2008 OCT 14 AM 10:11

CITY CLERK'S OFFICE

RECEIVED

Re: Proposed Article 17, Final Draft Rockville Zoning Ordinance -- High Voltage Transmission Lines

Dear Mayor Hoffmann and Members of the Council:

The purpose of this letter is to respond to comments made at the October 6, 2008, worksession on the provisions of proposed Article 17 of the Final Draft Zoning Ordinance related to high voltage transmission lines. Unfortunately, I was not able to attend the worksession and was therefore unable to respond immediately to explain why some of the language might still be relevant in Article 17.

The provision previously identified as Section 25.17.03.a.2 of Article 17 replicates the provision in Section 25-437(a) of the current Ordinance. This Section was created in the mid-1990s at the time of the development of the townhouse community known as the Villages at Tower Oaks. Section 25-437(a) was subsequently applied in conjunction with the development of the King Farm. This provision of the Code intended to recognize and establish a distinction in the undergrounding requirements by creating one type of treatment for high voltage transmission lines and a different treatment for lower voltage distribution lines that serve individual developments.

The matter of undergrounding the distribution lines that actually serve a development has never been questioned. On the other hand, the treatment of high voltage transmission lines, which do not serve individual developments directly, has been dealt with as a wholly different matter. The City recognized at the time of the creation of

Section 25-437(a), that there is little nexus between a development on a particular property and those high voltage transmission lines that may simply pass through a property when connecting different substations or other transmission facilities. The transmission lines serve very broad areas of the City, as compared to the individual distribution lines that serve a particular development and therefore have a direct relationship to that development. In addition, based upon information provided by the utilities at the time, there is a significantly greater impact in terms of feasibility, area of land affected, and costs for installation and maintenance, in order to place high voltage lines underground -- as compared to distribution lines.

As a result of recognizing that the high voltage transmission lines did not have a nexus to a particular development, the City allowed an exception to the undergrounding requirement for these high voltage lines. Following the enactment of this text amendment, the high voltage line that previously ran through the site of the Villages at Tower Oaks was relocated to the north side of Wootton Parkway (but within the Tower Oaks property). That transmission line continues south from Wootton Parkway along the east side of Route I-270. The poles carrying the transmission line along I-270 are located within the right-of-way for I-270. The I-270 right-of-way directly adjoins the western boundary of the South Gateway site at the Tower Oaks project.

The west side of the South Gateway site of the Tower Oaks project contains guy-wires that extend into the site from the poles carrying the transmission lines that are located in the I-270 right-of-way. (The guy-wires support and stabilize the poles holding the transmission line.) The guy-wires and the related poles are not part of the electric distribution lines that would provide service directly to the South Gateway site or to other parts of Tower Oaks. The guy-wires are related to the major transmission line along I-270. The guy-wires themselves cannot practically be placed underground and still functionally support the poles. Since there is not an approved development for the South Gateway site at this time, one cannot be certain whether or not the eventual layout will require relocation of the guy-wires. But, because the poles will remain in place in the I-270 right-of-way, presumably the guy-wires will need to remain also. The first sentence of the proposed Section 25.17.03.a.2., "Exception," in the new Ordinance was included in the existing Ordinance as Section 25-437(a) in order to address this type of situation.

I understand that the Director of Public Works suggested at the worksession that retaining the first portion of Section 25.17.03.a.2 could be beneficial to the City in allowing the opportunity to deal flexibly with high voltage transmission lines in the future. In considering this language, please note that both the existing language in Section 25-437(a) and proposed language in the first sentence of Section 25.17.03.a.2 are each discretionary. The language only "allows" the Planning Commission "for good cause shown" to permit non-distribution lines (i.e., transmission lines) to be relocated

The Honorable Susan R. Hoffmann, Mayor
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above ground; the language does not require the Planning Commission to so agree. I would therefore recommend retaining the first sentence of Section 25.17.03.a.2, both to provide flexibility to the City in the future without requiring a new text amendment at such time.

At the worksession, Sondra Block, Assistant City Attorney, expressed the view that Planned Development projects, such as Tower Oaks, would be protected on this issue by the definition contained in Section 25.03.02 of the proposed Ordinance. This would prevent any future application of this flexibility without a new text amendment. On that basis, the entirety of Section 25.17.03.a.2 could be deleted from the new Ordinance, if the legislative history is clear. In discussion with Ms. Block, she indicated that the Staff Report could indicate that this provision is unnecessary because it is covered by the definition.

I appreciate your consideration of these additional comments. Please contact me if you have any questions.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "William Kominers", written in a cursive style.

William Kominers

cc: Arnold J. Kohn, Esquire
Ms. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander
Sondra H. Block, Esquire
Cynthia M. Bar, Esquire

Exhibit No. 123
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

From: "Linda Ekizian" <ekizial@att.net>
To: <mayorcouncil@rockvillemd.gov>

Date: Sunday, October 19, 2008 04:27PM
Subject: Zoning home-based businesses: Accessory Structures

History: ☛ This message has been replied to.

Dear All

Restricting home-based businesses in attached and not detached structures may have an unintended negative impact.

If enforced, home-owners who use or wish to use accessory buildings for their business may need to pave, shade or enclose their yard to comply. Please allow businesses to exist in attached and detached structures.

Thank you for your consideration.

Kind Regards,
Linda

Linda Ekizian
304 South Horners Lane
Rockville, MD 20850